

CITY OF NEWPORT BEACH
Planning Commission Minutes
 March 17, 2011
 Regular Meeting – 6:30 p.m.

ROLL CALL: Commissioners Eaton, Unsworth, Hawkins, McDaniel, and Toerge – present. Commissioners Ameri and Hillgren – excused.		
STAFF PRESENT: James Campbell, Acting Planning Director Gregg Ramirez, Senior Planner Leonie Mulvihill, Assistant City Attorney Jaime Murillo, Associate Planner Marlene Burns, Administrative Assistant		
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on March 11, 2011.		
PUBLIC COMMENTS:		None
REQUEST FOR CONTINUANCES:		None
* * *		
CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of February 17, 2011, Item Nos. 1, 2, and 4. Motion made by Commissioner Toerge and seconded by Commissioner Unsworth to approve the minutes as presented. Motion carried with the following vote:		ITEM NO. 1 Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Toerge	
Noes:	None	
Excused:	Ameri and Hillgren	
SUBJECT: MINUTES of the regular meeting of February 17, 2011, Item No. 3. Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth to approve the minutes as presented. Motion carried with the following vote:		
Ayes:	Eaton, Unsworth, Hawkins, and Toerge	
Noes:	None	
Excused:	Ameri and Hillgren	
Abstention:	McDaniel	
SUBJECT: MINUTES of the regular meeting of March 3, 2011. Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth to approve the minutes as corrected. Motion carried with the following vote:		ITEM NO. 2 Approved
Ayes:	Eaton, Unsworth, Hawkins, and McDaniel	
Noes:	None	
Excused:	Ameri and Hillgren	
Abstention:	Toerge	

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NEW BUSINESS

SUBJECT: Minimum Side Setback Determination – (PA2011-013)
Broadmoor Pacific View Planned Community

ITEM NO. 3
PA2011-013
Approved

Staff is seeking a determination for the Planning Commission regarding the Acting Planning Director's decision on the application of side setbacks within the Broadmoor Pacific View Planned Community District.

Acting Planning Director, Jim Campbell, provided a generalized overview of the project and noted that there is some ambiguity in the Planned Community Text as it relates to the side setback that is at issue. A final setback map has been found for a portion of the lots within the community, which should be referenced when determining street and view setbacks as opposed to the original map that had been used as the standard for close to thirty years.

Jaime Murillo, Associate Planner, provided a briefing of the project and stated that the Broadmoor Planned Community Text (PC Text), which was approved by the City in the late 70's, establishes development standards, including height limitations, parking requirements, lot coverage, and building setbacks. Instead of establishing traditional front and rear setbacks, the PC Text establishes street and view setbacks as follows:

- View Setbacks- Typically, three feet from the top of a slope.
- Street Setbacks- Typically, five feet minimum to the house, except front-facing garages may be located as close as three feet.
- The PC Text also references a setback map for lot specific view and street setbacks.

In addition, Mr. Murillo highlighted the following:

- Question as to what site plan or map is the correct exhibit to reference when determining the street and view setbacks for the homes in the community.
- Question as to how side yard setbacks should be regulated given that zero-side setbacks do not actually exist within the community.
- Clarified that for lots located within Final Tract 9047 and Final Tract 9261, the Setback Map for Tentative Tract Map 9047 is the correct reference. For lots located within Final Tract 9260, the Final Setback for Tract 9260 is the correct reference.
- The only side setback regulation is as follows:
"A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures."
- The actual development pattern in the community is that most houses provide a four-foot minimum side setback on one side and a six-foot minimum side setback on the other side, which results in the required 10-foot separation between structures. In addition, the Homeowner's Association Covenants, Conditions and Restrictions (CC&Rs) for the community grants the four-foot setback area to the adjacent property owner for landscaping purposes, creating the appearance of a zero-lot line configuration.
- In instances where properties are located on cul-de-sacs and provide large side yards exceeding the 10-foot separation requirement, additions are possible, but the side setback regulation is ambiguous. Past practice has been to allow additions to the side property line provided a minimum 10 feet is provided to the adjacent house. It was recognized that the past practice

was inequitable and created a “first-come, first-serve” type scenario that unfairly impacted how close the adjacent property could build in the future.

- To resolve this inequity and provide certainty with regard to side setbacks, staff recommended that the Planning Commission make a determination that a minimum five-foot side setback shall be provided.

The Planning Commission provided the following comments and observations:

- An amendment to the Planned Community Text should be forthcoming to clarify the side set-backs.
- The City does not enforce a Homeowner’s Association Covenants, Conditions and Restrictions (CC&Rs).

Applicants James and Patricia White provided a brief presentation of their case to the Planning Commission.

- The only document that exists with an “Approved” stamp is the Plot Plan with the plan check number.
- Purchased the lot because of the ample space and felt that those homeowner rights needed to be preserved.
- Different terminology used interchangeably in the Planned Community Text, such as site plan and plot plan.
- Restricting development to the Approved Plot Plan gives each homeowner the greatest protection of what they purchased; the neighbor never asked them what would work.
- Belief that staff’s recommendation of five feet benefits some at the disadvantage of others.

Members of the Seaview Leadership:

Bill Moore
Ray Piantanida
Mary Donovan
Jim Magstadt

The comments were as follows:

- The Whites’ conclusion is not supported in that it would have the effect of not allowing expansions outside the original building envelopes.
- The Homeowner’s Association Covenants, Conditions and Restrictions (CC&Rs) do not allow the approval of a remodel that would result in significant and material view obstruction.
- The Architectural Committee sought to find a compromise between the homeowners as to the views and the home improvements.
- Architectural Committee after visiting both homes that were at issue, voted 5-0 to approve the addition and determined that there was no significant view restriction.
- Words that do not exist and are not defined in the Homeowner’s Association Covenants, Conditions and Restrictions (CC&Rs) should not be used, such as “building-envelope,” and “foot-print.”

The Planning Commission discussed the need for an amendment to the Planned Community Text; however it will come at a later date as the immediate need is to first interpret the side setback regulation.

Commissioner Toerge stated that it is the Architectural Committee is responsible for handling the view of homeowner’s and supports staff’s recommendation.

Commissioner Hawkins was concerned with the fact that the applicant for the home-

<p>improvement modification was not present for the hearing. In addition, the Planned Community Text does have language that speaks about view preservation and believes that there are more references.</p> <p>Commissioner Eaton noted that the City has been consistent on leaving the issues up to the Homeowner's Association as it relates to private view protections and aesthetics.</p> <p>Motion made by Commissioner Toerge and seconded by Commissioner Unsworth, to support staff's recommendation.</p> <p>Motion carried with the following vote:</p>		
<p>Ayes:</p> <p>Noes:</p> <p>Excused:</p>	<p>Eaton, Unsworth, Hawkins, and Toerge</p> <p>Hawkins</p> <p>Ameri and Hillgren</p>	
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<p>SUBJECT: Zoning Code Implementation – Discussion Item</p> <ul style="list-style-type: none"> Review Authority for Alcohol Sales <p>The Planning Commission shared the following observations:</p> <ul style="list-style-type: none"> Restaurants with alcohol sales that close at 11:00 p.m., previously came before the Planning Commission and now are heard before the Zoning Administrator; however they should be heard before the Planning Commission due to the following concerns: <ul style="list-style-type: none"> Loading the Peninsula with too many restaurants where alcohol is provided, creating dangerous situations for the surrounding neighborhood. The public is in need of a platform to share any concerns. The Zoning Administrator Hearings are typically scheduled at 3:30 in the afternoon, and is not convenient for the residents. There is no in-depth discussion at the Zoning Administrator Hearings. A recommendation to the City Council that an amendment to the Zoning Code be made so that the Planning Commission becomes the review authority for alcohol sales. <p>Comments were given by the following residents from the surrounding neighborhood:</p> <p>George Schroeder Dan Purcell</p> <ul style="list-style-type: none"> There is an over concentration of alcohol licenses. People in Zoning Administrator do not live in Newport Beach like the Planning Commissioners. Photos were provided to the Planning Commission which illustrated intoxicated people sleeping in public areas. Zoning Administrator meeting calendar is not published on the City's web-site. <p>Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth, to recommend to the City Council to implement a Zoning Code Amendment, changing the review authority for restaurants with alcohol sales that close by 11:00 p.m., from the Zoning Administrator to the Planning Commission.</p> <p>Motion carried with the following vote:</p>		<p>ITEM NO. 4</p> <p>REVIEW</p> <p>AUTHORITY</p> <p>FOR</p> <p>ALCOHOL</p> <p>SALES</p> <p>Approved</p>

Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Toerge	
Noes:	None	
Excused:	Ameri and Toerge	
SUBJECT: Zoning Code Implementation – Discussion Item <ul style="list-style-type: none"> • In-Lieu Parking <p>The Planning Commission expressed that there is a concern with the number of parking spaces that have recently been waived. Presently under the Code there are two options, commercial uses provide parking on-site or enter into an off-site parking agreement, which has problems associated with it. There is another option in the Code that needs to be implemented; however presently the amount available of funds is not sufficient to monitor the program. Therefore, a Code change is needed along with a study to determine the cost necessary to properly run and maintain the program.</p> <p>Comments were given by the following residents from the surrounding neighborhood: Dan Purcell George Schroeder</p> <ul style="list-style-type: none"> • Not for building parking for other people, other solutions may exist. • If parking is waived then a fee should be paid. <p>Jim Campbell, Acting Planning Director, mentioned that there are 297 parking spaces that exist in the program at a rate of \$150.00 per year, per space.</p> <p>Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth, that a recommendation be made to the City Council to reimpose Zoning Code Section 20.40.130, and to conduct a study on the actual cost of a parking space in the City.</p> <p>Motion carried with the following vote:</p>		ITEM NO. 4 IN-LIEU PARKING Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Toerge	
Noes:	None	
Excused:	Ameri and Toerge	
SUBJECT: Zoning Code Implementation – Discussion Item <ul style="list-style-type: none"> • Planning Commission Appeals <p>Acting Planning Director Campbell stated that with the update of the Zoning Code, there was an elimination of all fees and there was an oversight related to having a caveat back in the Master Fee Schedule. There was no intent on having the Commissioners pay a fee to file an appeal. The recommendation is to revert back to the language that was in the previous Zoning Code for appeal fees.</p> <p>There was a list presented to the Planning Commissioners on the number of appeals filed by Planning Commissioners and it was requested that the list be distributed to the Planning Commission.</p> <p>Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, that a recommendation be made to the City Council to revert back to the language that was in the previous Zoning Code regarding the appeal fees.</p> <p>Motion carried with the following vote:</p>		ITEM NO. 4 PLANNING COMMISSION APPEALS Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Toerge	
Noes:	None	
Excused:	Ameri and Toerge	
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STAFF AND COMMISSIONER ITEMS		

<p>Planning Director's report:</p> <ul style="list-style-type: none"> • Adjustments have been made to the internal staff: <ul style="list-style-type: none"> ◦ Patrick Alford will be managing the Banning Ranch Project. ◦ Gregg Ramirez will become the Acting Planning Manager. ◦ Jaime Murillo will become the Zoning Administrator. • Commissioner Fred Ameri had been hospitalized for five days, and that was the reason for his departure at the previous meeting; however he is feeling better. He may be present at the next meeting. • City Council Hearing from the last meeting: <ul style="list-style-type: none"> ◦ Way-finding sign has been approved and is moving forward. ◦ Master Fee Schedule was approved. ◦ Code Amendment for Santanella Terrace was adopted and passed to the Second Reading. ◦ City Council is focusing on the following five priorities: <ul style="list-style-type: none"> ▪ John Wayne Airport ▪ Revitalization of Commercial Areas ▪ Tidelands Management ▪ Pension Reform ▪ Reorganization 	ITEM NO. 5
<p>Planning Commission reports:</p> <ul style="list-style-type: none"> • Commissioner Hawkins reported that the Economic Development Committee is no more. In addition, EQUAC is going to be on an "as-needed" basis, a recommendation from the Council. <p>Assistant City Attorney reports:</p> <ul style="list-style-type: none"> • Mandatory AB1234 Training Sessions will be offered on the following dates and times: <ul style="list-style-type: none"> ◦ March 29, 2011 from 10:00 a.m. to 12:00 p.m. ◦ March 31, 2001 from 6:00 p.m. to 8:00 p.m. 	ITEM NO. 6
<p>Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report. – None.</p>	ITEM NO. 7
<p>Requests for excused absences – None</p>	ITEM NO. 8
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<p>ADJOURNMENT: 9:06 p.m. MICHAEL TOERGE, SECRETARY CITY OF NEWPORT BEACH PLANNING COMMISSION</p>	